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Some Suggestions as to The International Court of Justice.

Remarks of Benjamin F. Trueblood at the Annual Meeting of the American Society of International Law, April 26, 1912.

Mr. Chairman: I should like to emphasize two or three things only which have been brought out or suggested in the interesting paper read by Dr. Tryon.

All the peacemakers of the world are agreed, I think, that a permanent International Court of Justice is one of the great ends to which all our efforts are tending, and for which we are all working. As long ago as 1840, or, in fact, some time in the thirties, the American Peace Society offered a prize of one thousand dollars for the best essay on a Congress and Court of Nations. That offer brought out, among others, the now famous essay of William Ladd, and, if I may quote the opinion of Dr. Scott, Mr. Ladd said about all that is worth saying on the subject of an international court. That was seventy years ago.

The pacifists of this country and of all countries have always kept steadily in view that the aim of the peace movement, of course leaving out of view its final aim, the abolition of war and the establishment of permanent peace, is to get a permanent International Court of Justice established. No one need waste time, therefore, in pleading for such a court any more. Not only all the pacifists, but also a good many people who are not professedly pacifists, are agreed as to that.

When it comes to the question of the time when we shall get this International Court of Justice and the methods by which it shall be established, there immediately appear differences of view, differences which are interesting, and which we ought all to consider with due respect for each other.

I, for one, do not believe that we have yet got beyond the necessity of the present Permanent Court of Arbitration established at The Hague in 1899. There are several reasons why this court of arbitration is at the present time better adapted and more certain to secure proper adjustment of disputes among the nations than a permanent court of justice would be. The nations do not yet trust each other; there is not that sort of confidence which a court of justice would demand. The existence of the court would help to create this confidence, but you must have some of it before you get the court. If you had a court of justice set up today, it is more than likely that a great many of the controversies that arise among the nations would be referred to a tribunal chosen out of the present board of arbitrators established by the Hague Conferences of 1899 and 1907. It will be a good many years, probably, before we shall see the end of the need of the present arbitration court in steering us through the suspicions and jealousies and hostilities coming to us from the past among the nations. So I hope our friends who are so deeply interested in the creation of an International Court of Justice, as I also am, will not say too much against the present court of arbitration.

You, of course, all know what was done at the second Hague Conference. That has been brought out in the addresses which have been given. A convention to create a permanent court of justice among the nations, presented by the United States delegation, was approved

without a dissenting vote among the delegations, and the only reason we have not that court in operation is that the delegates could not agree upon the method of selecting the judges. Although five years have elapsed since the International Court of Justice was unanimously approved in principle, there has been no progress toward the inauguration of the court.

What it seems to me all of us in the American Society of International Law and in all the peace societies ought at the present time to do is to turn our attention very largely and earnestly to the question of how we shall get this court into operation—how we shall get the judges chosen. That is the great question now before us. It is a greater question than that of procedure before the court. All these questions should be considered, but we ought to turn our attention largely to the methods of getting the court speedily into operation, as it will have to go through its infancy and youth, and it will be a long time before it can supplant all the other institutions which are now used.

I quite agree with the sentiment expressed last year at the Mohonk Conference by a distinguished member of the Philadelphia bar, that the members of this court ought not to be appointed directly by the nations represented at The Hague—there were forty-four nations—and that they ought not to represent the nations of the world as such at all. I am firmly convinced that that principle is sound, that in whatever way they may be appointed they ought not to be chosen by the nations as such. Our United States Supreme Court judges are not appointed by the States, but by the President, the executive head of the nation. I do not think the supposed analogy between our Supreme Court and a Permanent Court of International Justice quite holds. Our States are all constituent parts of the Union. They are not independent and sovereign in the same sense that the nations that are represented at the Hague Conference are. Yet as to the method of appointing the judges, I think we can safely follow the lesson of our own Supreme Court. Two or three methods have been suggested. I have not lost the hope that a member of the court for each of the nations may be appointed, and that a method may be found of using so large a court successfully. If I remember rightly, the Supreme Court of the State of New York has some seventy-five or seventy-six judges. If you should select a representative for each of the nations for the international court, might not the court be divided into sections—say five or six—and each of these sections given jurisdiction in certain classes of cases, one, for instance, to have charge of all commercial cases, another to have charge of the rights of citizens of countries residing in other countries, and so on? It would be easy to divide up a court of forty-five or forty-six members in this way. I do not think the matter of expense would occasion any difficulty. The State of New York does not complain of keeping in constant employment seventy-five or seventy-six judges. I suggest this for careful consideration by those who are working out the plan by which such a court may be brought into operation in the near future.

Then, as to the appointing of the judges, whether there be forty-five or fifteen, or nine or seven, as suggested this morning, in some form, if not directly, all of the nations ought to have a part in the selection. It has been suggested that the president of the Hague Con-

ference, acting in his representative capacity, might be asked to name the judges. I doubt if that would be satisfactory, however, at the present time. A committee of seven, nine, or fifteen might be created at the next Hague Conference, whose duty it should be to select the judges, and then present their names to the full conference for approval. It seems to me it is possible in some such way as this either to have a court of forty-five judges, divided into sections, each section to have charge of a certain class of cases, and these judges to be selected by some representative commission of the Hague Conference, or to have a court of a smaller number of judges selected in the same way, avoiding national prejudices and national suspicion in the creation of the court at the very beginning.

One word more. I rejoiced as much as any one else in the creation of the prize court at the second Hague Conference. It has carried the principle of judicial settlement into a very important field, but the more I think of it the more I doubt whether you will ever be able to create the International Court of Justice through the prize court. The prize court will have no existence, except in form, unless a war is on between two nations, and the number of times it will be called on to act perhaps will be very few. Many of us are hoping it will never be called on to act at all. Between the United States and Great Britain it is almost certain that it will never be called into use. In three years from now we shall be celebrating one hundred years of peace between Great Britain and the United States. In three years Norway and Sweden will be celebrating one hundred years of peace between those countries, and in 1915 it will also be a hundred years since Great Britain and France had a tilt at arms. As between Great Britain and Germany, it has been longer than that since they were at war, and I think it will be longer than that, in spite of the present strain, before they will have another war. Many nations will never call the prize court into service at all.

When mention is made of a distinction between civilized and uncivilized nations, I have tried sometimes to draw the line and put civilized nations on one side and the uncivilized on the other, but I have never succeeded in making any satisfactory division. Every State should be represented in the International Court of Justice. They are all, or nearly all, worthy to be classed as civilized States. On the whole, therefore, it is not well to push the matter of a permanent International Court of Justice through the court of prize. If the prize court, which was accepted at The Hague, is put into operation, it will probably deal only with cases between a few of the great nations—the nations which now go to war. It is not the uncivilized nations which today go to war, and are arming for it, but the so-called civilized nations. If you were to make a regular International Court of Justice out of the prize court, then fewer nations would go into it. So I think that we peacemakers, international lawyers, and students of these problems ought to give our attention very seriously to the question of how to get the court of justice, approved in principle at the second Hague Conference, into actual operation. It will take some time to get it into operation, of course. In the eleven years since it was established the present court of arbitration has only had some nine cases before it, and I doubt if

in the next ten or twelve years it will have as many more. When your court of justice is created it will take a long time to get it thoroughly into operation. Let us then devote our energies to securing the appointment of the judges and getting the court started.

Book Notices.

THE TURCO-ITALIAN WAR AND ITS PROBLEMS. By Sir Thomas Barclay. London: Constable and Co., Ltd. Price, 5 shillings net.

Of the 259 pages of this volume less than half compose the monograph by Sir Thomas Barclay. A short chapter follows by the Rt. Hon. Ameer Ali, on Moslem Feeling, and the latter half of the volume is given to appendices, containing important documents relating to the outbreak and progress of the war, treaties affecting the integrity of the Ottoman Empire and the status of Egypt, certain of the Hague conventions, etc., etc.

This volume was written while the conflict between Italy and Turkey was still in progress and the outcome none too certain. Its attempt is to present the "questions arising out of the war as dispassionately as possible," without pleading the cause of either party to the dispute. In the introduction the author emphasizes the duty of respecting treaty engagements, the sanctity of such being "the very foundation of international morality."

Dr. Barclay then proceeds to discuss the place of the Hague peace conventions and Italy's indifference to injunctions and powers contained therein. It is a fact that Italy's haste to declare war was so great that no opportunity was given the powers to offer mediation. Her treaty obligations and how she has broken them and the illegality of the annexation of Tripolitana and Cyrenaica are then clearly presented. That Italy has for many years regarded North Africa as her sphere of influence is next pointed out, but this "does not exonerate her from the guilt of an unprovoked aggression or exempt her from the duty of fully indemnifying Turkey and adjusting her legal position with reference to the other parties to the treaties of 1856 and 1878."

The question of the suggested indemnity to Turkey and analogous cases, such as our purchase of the Philippines, are then taken up. How British interests are affected and the abnormal position of Egypt under Turkish suzerainty and a British protectorate form the subject-matter of the next chapters. The neutralization of the route to India is of vital importance to Great Britain, and it would seem desirable for the safety of European shipping to make the Red Sea a neutral zone as is the Suez Canal.

The concluding opinion of the author is that "from first to last every possible illegality has been committed and the only hope for the jurist is that it [the war] will take its place in history as an anachronism, fitting into no theory of current morals and quite out of harmony with the spirit of the age in which it has taken place."

CHINA'S NEW DAY. A study of events that have led to its coming. By Isaac Taylor Headland, D. D. 263 pp. Price, paper, 30 cents. Cloth, 50 cents,